HARVARD LAW REVIEW.

Published monthly, during the Academic Year, by Harvard Law Students.

SUBSCRIPTION PRICE, $2.50 PER ANNUM. . . . . 35 CENTS PER NUMBER.

HAS A CRIMINAL JURY A RIGHT TO JUDGE THE LAW? — In the case of *Sharf and another* v. *The United States*, decided January 21 last, 15 Sup. Ct. Rep. 273, the Supreme Court of the United States has considered with the greatest care and elaboration the question of the right of the jury to judge of the law in criminal cases. The court holds (7 to 2) against it. It is easy to see that the opinion of the court (by Harlan, J.) and the dissenting opinion of Gray, J., with whom Shiras, J., concurs, are to be henceforth the great references upon this much debated subject. Mr. Justice Gray, who was the reporter of the great case of *Comm.* v. *Anthes*, in 5 Gray, 185, and the author of a remarkable and learned note on this question in *Erving* v. *Cradock*, Quincy, 553, has now put forth all his learning and strength in vindication of his well-known views. If it be thought, as it would seem that it well may be, that he does not satisfactorily establish them, it may well be concluded that it is because it is impossible to establish them.

A "CONSTRUCTIVE" FLIGHT FROM JUSTICE. — Two persons stood in North Carolina and shot across the border at a man in Tennessee and killed him. Upon an indictment in North Carolina for murder, they were discharged, on the ground that their crime was not committed in North Carolina. *State* v. *Hall*, 114 N. C. 909. Their extradition was then requested by Tennessee, but the Supreme Court of North Carolina held that they were not "fugitives" from Tennessee, and that there was therefore no provision of law for their extradition. *State* v. *Hall*, 20 S. E. 729. Both decisions are supported by abundant authority.

Two judges, however, dissent from the decision in the second case, upon two grounds: first, that the defendants were "constructively" in Tennessee, if it was true that their crime was committed there, and as a consequence that they had "constructively" fled into North Carolina,

where, in any but a Pickwickian sense, they had continually been; secondly, because to allow such miscreants to escape just punishment for their misdeeds would be "a singular state of things," and would have surprised the judge who first laid down the doctrine as to *locus* of a crime of this sort. That judge was really in error; and his error the court should now "correct, not perpetuate," by surrendering these fugitives for trial in Tennessee.

These two arguments are examples of rather common misconceptions. The first would lead logically to this result, if applied to the sinking of a Chinese war-ship by a Japanese. Either the Japanese were on board the Chinese vessel when they fired the guns which sank the latter, or the damage was done on board the Japanese vessel; a sufficiently absurd dilemma. It is in fact quite possible for a man, even without the help of a human agent, to do something in a place where he is not present.

The argument *ab inconvenienti* indicates a praiseworthy but misplaced zeal that a wrongdoer should receive his just deserts. It is not the duty of a judge to deal out retribution for sin; perhaps that function cannot profitably be separated from omniscience, but at any rate it has never been committed to a court of common law. In punishing crime the court is dealing with an injury to the State whose law it administers. Killing a man in Tennessee is not an injury to North Carolina, and that a man should go unpunished for an offence against Tennessee should not officially concern a North Carolina judge, whether the man is on the east or the west side of the boundary line. In ordering the surrender of a fugitive the North Carolina court is still dealing with North Carolina law (or with an Act of Congress), and the effect of that law on the administration of justice in Tennessee cannot be considered. The legislature, not the court, considers Tennessee in the matter. These two judges could hardly with consistency object if a Tennessee officer should kidnap the defendants and carry them into Tennessee.

LIBEL BY EFFIGY. — The London newspapers last month contained accounts of the case of *Monson* v. *Madame Tussaud & Sons (Limited)*, a suit for libel which forms the last act in a *cause célèbre*. Mr. John Alfred Monson, as everybody knows, is the gentleman who figured as defendant in the sensational murder trial in Scotland a year ago, the charge being that he killed his pupil, Cecil Hambrough, while the two were on a hunting trip together. It appears that after his escape from that ordeal, with the ungracious verdict of "Not Proven," and after the failure of his suit to recover the insurance on the life of the very man he was charged with having murdered, the defendants, who are the proprietors of Tussaud's well known wax-works show, thought him a suitable subject for a wax figure in their establishment. Monson's own hunting suit and gun were procured to dress up the figure, and the whole was set off by a background representing the Scottish moor where the shooting occurred. According to the defendant's story, Monson sold them the clothes and gun for this very purpose; but however that may be, no sooner was the show well started than Monson brought his action for libel, the innuendo being that the defendants, by the exhibition of the effigy, meant that the plaintiff was a "notorious person connected with a tragedy that remained a mystery in a way that was discreditable." It is not clear why an innuendo that the defendants meant that Monson was a murderer would not have been